

EX PARTE OR LATE FILED

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March 4, 1997

**EX PARTE**

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: **CC Docket No. 96-45 -- In the Matter of Federal-State Joint Board on Universal Service**

Dear Mr. Caton:

Today, March 4, 1997, Thomas J. Long, Senior Telecommunications Attorney of The Utility Reform Network (TURN), sent the attached letter, separately addressed, to each of the members of the Federal-State Joint Board, namely Chairman Hundt, Commissioner Chong, Commissioner Ness, Julia Johnson, Kenneth McClure, Sharon Nelson, Laska Schoenfelder, and Martha Hogerty. In addition, a copy was sent to each of the Joint Board Staff members shown on the attached service list.

Please accept a copy of this letter for inclusion in the above-referenced proceeding.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Thank you for your attention to this matter.

Sincerely,

  
Thomas J. Long  
Senior Telecommunications Attorney

Enclosures

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Nettie Hoge

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March 4, 1997

The Honorable Reed E. Hundt, Chairman  
Federal Communications Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Re: *Funding Source for Universal Service Programs*  
*CC Docket No. 96-45*

Dear Chairman Hundt:

I am writing on behalf of The Utility Reform Network (TURN)<sup>1</sup> to urge you to adhere to the determination in the Recommended Decision (¶¶ 807-813) that universal service programs be funded by an assessment on gross carrier revenues net of payments to other carriers.

With approximately 30,000 members throughout the state of California, TURN is California's leading independent non-profit advocacy organization for California's utility consumers. We focus our advocacy on the interests of residential and small business customers. TURN is a member of the National Association of State Utility Consumer Advocates (NASUCA), on which TURN serves on the Telecommunications Committee. In the course of California's proceeding to establish new universal service mechanisms, TURN has developed substantial expertise related to the issue of the source of funding for such mechanisms as required by the Telecommunications Act of 1996 (the Act).

Notwithstanding the opening and reply comments of many parties (primarily carriers and their representatives), the Act and sound public policy compel that universal service assessments be imposed in the first instance on carriers, not on customers. The carriers who press for a retail end user surcharge ignore the crystal clear requirements of the Act in an effort to exempt themselves from contributing *any* money to the support of universal service.

<sup>1</sup> Before November 1996, we were known as Toward Utility Rate Normalization. Our acronym, TURN, remains unchanged.

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Executive Director

TURN is a 501(c)(3)  
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organization founded  
in 1975. TURN is a  
501(c)(3) organization.



This letter will briefly set forth the legal and policy reasons mandating an assessment on carriers, not customers, and will then demonstrate the fallacies in the arguments of commenters who seek an end user surcharge.

### Legal Analysis

The Act could not be clearer that the mandated universal service programs must be funded by contributions from all carriers, not from a levy on customer bills. Among the six enumerated guiding principles that the Joint Board and this Commission are to use in reforming universal service support mechanisms, Section 254(b)(4) provides:

(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS. --  
*All providers of telecommunications services* should make an equitable and nondiscriminatory *contribution* to the preservation and advancement of universal service. (Emphasis added).

The Act drives home the point that carriers, not customers, are to provide the money for new universal service funds in Section 254(d):

(d) TELECOMMUNICATIONS CARRIER CONTRIBUTION. *Every telecommunications carrier* that provides interstate telecommunications services shall *contribute*, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. . . .

These two provisions unequivocally direct that "all providers of telecommunications services" and "every telecommunications carrier" are to be the initial source of funds for new universal service mechanisms. Had Congress intended to permit an end-user surcharge as the funding source, it could have expressed such an intent, for instance by adding the words "or their customers" after the italicized phrases in the above-quoted provisions.

Congress's use of the word "contribute" further clarifies the intent to preclude a retail surcharge. The dictionary defines the intransitive form of contribute to mean "to give (money, food, etc.) to a common supply, fund,

etc.”<sup>2</sup> If an end user surcharge were used, carriers would give nothing to a common fund; carriers would simply be a conduit for collecting and transmitting money supplied by customers. To give effect to the ordinary meaning of the word “contribute”, the assessment must be on carrier revenues, not on retail charges to customers.

The Act’s use of the word “contribute” is not accidental. When passed by the Senate, the universal service provisions of the Senate bill (S.652) that were substantially adopted in the Act used the word “participate”, rather than “contribute.”<sup>3</sup> Had the word “participate” been adopted in the Act, carriers might have a plausible argument that the activities of collecting and remitting money obtained from customers through a retail surcharge could constitute participation sufficient to meet such a requirement. However, by choosing the word “contribute,” Congress opted for a funding mechanism that would require carriers to make a direct payment of money themselves.

### Policy Analysis

Support for universal service should be a responsibility that is shared between carriers and consumers. Consumers certainly benefit from a ubiquitous and high quality telecommunications network. But carriers also profit from the enhanced value of the products and services they offer as a result of a network that reaches and is affordable to the vast majority of consumers. Carriers will particularly benefit from discounted services offered to schools, libraries, and rural health care providers because this policy will accelerate the development of potentially huge markets for advanced telecommunications services.

Consequently, the burden of supporting universal service should not fall solely on consumers. Yet that would be the result of adopting a retail end user surcharge. One hundred percent of funds for new universal service

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<sup>2</sup> *Webster’s Encyclopedic Unabridged Dictionary of the English Language* (1989).

<sup>3</sup> Section 253(c) of S. 652 as it was passed by the full Senate, provided that “[e]very telecommunications carrier . . . shall participate . . . in the specific and predictable mechanisms established by the Commission . . . to preserve and advance universal service. (*Cong. Rec.* S8575 (daily ed. June 16, 1995)).

mechanisms would be supplied by customers; not a penny would come from the carriers and their shareholders, who reap the profits made possible by universal service policies.

In contrast, the Recommended Decision's assessment on net carrier revenues would have the salutary effect of sharing the cost of supporting universal service. Carriers would be able to pass through the assessments in their prices only to the extent that market conditions allow. Particularly as competition increases, carriers are unlikely to be able to pass through the full amount of any assessment. As a result, carriers' shareholders will be required to shoulder at least some of the cost of universal service.

Over the many years in which new universal service mechanisms will be in place, the choice between an end user surcharge and an assessment on net carrier revenues could very well determine the distribution of billions of dollars between consumers and shareholders. Therefore, it should be no surprise that firms in different sectors of the telecommunications industry can agree that they would prefer that consumers come out on the short end of this distribution of wealth. Carriers should not get a free ride; universal service support should be a shared undertaking.

#### Response to Opponents of Assessments on Carriers

1. *Assertion # 1: An Assessment on Carrier Revenues Net of Payments to Other Carriers Would Not Be Equitable and Nondiscriminatory*

Some commenters have expressed concerns that because of differences in the extent of price regulation different carriers face, certain carriers (particularly incumbent local carriers) would not have an equal opportunity to pass through assessments in their prices. Related concerns have been expressed about the equity of excluding payments made to other carriers.

These concerns can be easily addressed. To satisfy the "equitable" and "nondiscriminatory" requirements of Section 254(b)(4), all carriers should have an equal opportunity (but not a guarantee) to pass through universal

service assessments in rates. How this opportunity is provided should depend on the degree to which a carrier's services are price regulated:

(1) If a category of prices is fixed by regulation, rates should be permitted to increase by no more than the percentage of the assessment<sup>4</sup>;

(2) If rates are subject to a price band, the price floors and ceilings should be increased by the percentage of the assessment. The effect will be to allow carriers the opportunity to raise rates by up to the amount of the assessment percentage, but allow competition to determine whether carriers must absorb any of the costs of the surcharge;

(3) If rates are not subject to any regulation, then the ability to pass through assessments will be determined by market conditions.

This response also answers the concern that carriers who use unbundled network elements (UNEs) or purchase incumbent local exchange carrier (ILEC) services will incur a lesser burden than carriers who entirely use their own facilities. ILEC resale and UNE rates -- which are likely to be fixed by regulation and not subject to price bands -- should be permitted to reflect the percentage assessment on carrier revenues. As a result, purchasers of these services will not escape their equitable share of the assessment applicable to these wholesale services.<sup>5</sup>

## 2. *Assertion #2: An Assessment on Carrier Revenues Would Not be Explicit*

This claim is based on a misreading of the Act. What the Act requires

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<sup>4</sup> With respect to intrastate services, state commissions would retain the authority to determine whether a full pass-through is appropriate.

<sup>5</sup> This is the result the Recommended Decision appears to envision in paragraph 808, which notes that "carriers are permitted under section 254 to pass through to users of unbundled elements an equitable and nondiscriminatory portion of their universal service obligation."

to be made explicit is not the precise amount of universal service support that individual customers may ultimately pay, but rather the total amount of support that is needed for universal service programs.

This becomes evident when one reviews Section 254(e), which contains the only mention of the word "explicit" in Section 254.<sup>6</sup> Section 254(e) addresses the support to be received by carriers, not the mechanism for supplying that support. The directive that support must be explicit is designed to rectify the current situation in which there is no explicit quantification of the amount of support that ILECs need in order to cover their costs to serve high cost areas. As a result of the current situation, there have been longstanding disputes about how much of ILECs' current revenues constitute necessary support for universal service and how much constitute profit or compensation for inefficient costs. Now that all markets are open to competition, this debate must be resolved by making an explicit determination of the money that is necessary to support service to high cost areas.

Consequently, the "explicit" requirement of Section 254(e) will be satisfied once this Commission adopts a cost proxy model to determine the costs of serving various geographic areas, thereby enabling a quantification of the high cost support that is needed. In sum, the word "explicit" applies to the amount of support that is needed, not to the amount of that support that consumers or carriers may ultimately pay.

As a matter of policy, there is no compelling reason for consumers to know the precise breakdown between carriers and consumers of the ultimate payments for universal service support. Numerous local, state, and federal government programs are supported by assessments on firms, some of which are passed through in prices. Consumers should -- and will -- be informed that carriers are paying an X% assessment to support universal service policies. Carriers can be expected voluntarily to provide this information on their bills to customers, as a way of showing their support for universal service and/or as a means of explaining why certain prices may be higher than they

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<sup>6</sup> It is noteworthy that the many adjectives used in the universal service principles set forth in Section 254(b)(2) do not include the word "explicit." Universal service contributions must be equitable and nondiscriminatory, and support mechanisms must be specific, predictable and sufficient.

otherwise would be. With an assessment that is ultimately shared by both carriers and customers, both of these groups will have an interest in monitoring the size of universal service programs and petitioning the government if such programs are perceived as excessive.

3. *Assertion #3: Carriers Would Be Able to Strategically Pass Through Assessments on Carriers, To the Detriment of Consumers and Competition*

Some commenters appear to be concerned that carriers would take advantage of services where competition is minimal or nonexistent to pass through more than a proportional share of the assessment.

This is a result that should not occur as long as rate regulation remains in place as necessary to restrain significant market power. Under the simple pass-through rules described in response to assertion #1, for monopoly services or those still subject to significant market power, the most that rates could go up would be by the percent of the assessment. Thus, no services could be raised by any more than the assessment percentage, and some services would experience price increases less than that percentage, depending on market conditions. This is a competitively neutral outcome that will not harm competition or consumers.

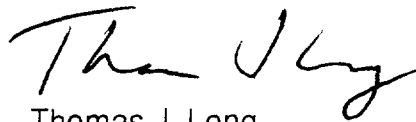
Conclusion

The Act could not be clearer that new universal service programs must be funded by assessments on carriers. The result of such assessments will be a salutary sharing of universal service costs between consumers and shareholders. None of the commenters has presented any sound legal or policy reason for departing from the conclusion of the Recommended Decision to assess the gross revenues of carriers net of payments to other carriers.



Thank you for the opportunity to share our views on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Long". The signature is fluid and cursive, with the first name "Thomas" and last name "Long" clearly distinguishable.

Thomas J. Long  
Senior Telecommunications Attorney

cc: Joint Board Staff

## APPENDIX G SERVICE LIST

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